

APPEAL NO. 031139
FILED JUNE 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 2, 2003. The hearing officer issued a decision after the hearing in which he set aside two prior orders on attorney's fees, one that had been entered on January 7, 2003, (order 1 herein), and the other that had been entered on January 22, 2003, (order 2 herein). In his decision the hearing officer stated that these attorney's fees awards were excessive and awarded attorney's fees in the amount of \$0.00. The appellant (attorney herein) files a request for review challenging the decision of the hearing officer. No response was filed from either respondent 1 (claimant herein) or respondent 2 (carrier herein).

DECISION

Reversed and remanded.

Order 1, which is labeled as TWCC #: No. 1, granted the attorney \$1,020.00 in attorney's fees for dates of service from October 29 through November 25, 2002. Order 2, which is labeled as TWCC #: No. 2, granted the attorney \$675.00 in attorney's fees for dates of service from December 18, 2002, through January 7, 2003. The attorney states in his request for review that the claimant disputed attorney's fees on January 29, 2003, after the attorney had successfully resolved the disputed issues in the claimant's case. Nothing in the appeal file shows when or how the dispute over attorney's fees arose or anything concerning the claimant's underlying case.

There is in evidence, a letter from the Texas Workers' Compensation Commission (Commission) dated March 10, 2003, in which the parties were notified that there would be a hearing on attorney's fees on April 2, 2003. There is also in evidence, a letter from the attorney to the Commission in which the attorney complains that the notice does not specify which attorney's fees order or dates of service are in dispute. The attorney goes on in the letter to state that he waives the disputed fee and that he will not be present at the hearing.

In his request for review, the attorney argues that the hearing officer erred in setting aside Order 1 because it was not timely disputed. The attorney also argues that the hearing officer erred in proceeding with the CCH and closing the record without first sending the attorney a 10-day show cause letter.

The appeal file contains correspondence from the Commission staff attempting to obtain a copy of the tape recording of the CCH in this case. This correspondence appears to conclude that the tape recording is lost.

In light of the state of the record in this case, particularly without a tape recording of what actually transpired at the CCH, we have no choice but to reverse the decision and remand this case to the hearing officer. To insure that we have something to review should this case be appealed to us again after remand, we direct the hearing officer to notice the parties of a hearing on remand and to hold a CCH on remand making a tape recording or other record of the proceedings. At the CCH on remand, the attorney will have an opportunity to urge his argument concerning the timeliness of the dispute regarding attorney's fees.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge